IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3386 of 1990
Date of Decision: 22.8.2007

Joga Singh .....Petitioner

Versus

Mauji Ram ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Arun Nehra, Advocate, for the petitioner.

Shri K.S. Dadwal, Advocate, for the respondent.

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the Courts below, whereby the petition seeking ejectment of the tenant on the ground that the tenant is in arrears of rent @ Rs.500/- p.m. for the period 1.12.1985 to 30.4.1986, was dismissed.

It is the case of the petitioner that the premises was let out by Kuldip Kaur on 13.5.1986 at the rent of Rs.500/- per month to the respondent, but subsequently, the tenant stopped paying the rent which led to filing of the present petition. On behalf of the tenant it was pleaded that in fact, the petitioner is not the landlord and that Kuldip Kaur and/or Mohan Kaur attorney of the petitioner has no right to file the present petition. It was pleaded that the premises in dispute were taken on rent from one Mohan Singh, husband of Kuldip Kaur at the monthly rent of Rs.240/- and rent upto February, 1986 stands paid to Mohan Singh, whereas the rent for the months of March and April, was tendered in the Court, therefore, the petition is liable to be dismissed.

Learned Rent Controller returned a finding that at the time of letting out of the shop, the petitioner-Joga Singh (owner) was living in Canada and, therefore, the premises could not have been let out to Mauji Ram by Joga Singh. It was, thus, found that the stand of the respondent that the premises were let out by the son-in-law of the landlord, is correct. It was also found that Joga Singh has got seven shops and no rent deed was executed by Kuldip Kaur, except with tenant Satnam Singh, on 10.2.1986. It is also found that AW1-Kuldip Kaur admitted in cross-examination that when rent of two months' was taken from the respondent, no receipt was given to him. After considering the evidence of AW2- Surjit Singh and that of Kuldip Kaur (AW1), the Court found that the rate of rent at which the premises were let out was raised to Rs.240/- per month. With the said finding, the petition was dismissed.

In appeal, the learned Appellate Authority found that at the time of creation of the alleged tenancy, Kuldip Kaur was serving in a school in Meghowal which is four kilometres away from Mahilpur and she used to attend her duties from 9 a.m. to 4 p.m. and, thus, it was not possible for her to induct a tenant. Thus, it was found that the tenant was inducted by Mohan Singh. It was also found that Mohan Singh, has not been examined although it was the stand of the respondent that he has paid rent upto February, 1986 to Mohan Singh. Consequently, the learned Appellate Authority, while upholding the finding that the rent was Rs.240/- p.m., dismissed the appeal.

Before this Court, the learned counsel for the petitioner has vehemently argued that Kuldip Kaur is not stranger to Joga Singh and in fact, is his daughter and was appointed as attorney by Joga

Singh, vide registered power of attorney dated 19.6.1981 i.e. much before the creation of the tenancy in respect of the shop owned by Joga Singh. It is contended that the tenant while appearing as a witness has admitted the fact that the shop in dispute is owned by Joga Singh, therefore, the finding returned by the Courts below that the premises were let out by Mohan Singh and the petitioner is not the landlord, is not correct. Since Kuldip Kaur was a teacher in a school, four kilometres away from the shop in dispute, the inference drawn by the Appellate Authority that the premises could not be let out by Kuldip Kaur, is not sustainable.

It is apparent from the statement of the tenant that Joga Singh is the owner of the premises in dispute. The power of attorney Exhibit A.1 is dated 19.6.1981 executed by Joga Singh in favour of Kuldip Kaur. Therefore, the act of Kuldip Kaur or her husband Mohan Singh in letting out the premises was on behalf of Joga Singh alone. Mere fact that Kuldip Kaur was employed in school which is four kilometres away, is hardly relevant to negate the relationship. The tenancy is not required to be created between 9 to 4 p.m. Similarly the factum that no rent deed was executed, is not relevant. The relationship of the parties is such, one tends to believe the story that premises were let out on behalf of Joga Singh. Therefore, the finding recorded by the Appellate Authority that the petitioner is not the landlord of the demised premises, is reversed. It is held that in fact, the petitioner is the landlord and the respondent has been inducted as a tenant under the petitioner herein.

Coming to the question of rate of rent of the tenanted premises. The learned Rent Controller has appreciated evidence and held that the rate of rent is Rs.240/- p.m. and that the rent upto

February, 1986 was paid to Mohan Singh and subsequently, it was tendered in the Court. The Appellate Authority has affirmed such finding. It is the categoric case of the tenant that the rent has been paid to Mohan Singh, in respect of the shop in his possession. Mohan Singh has not been examined as a witness. He is not the stranger to the parities being son-in-law of Joga Singh and husband of petitioner-Kuldip Kaur. Thus, the finding of fact has been recorded that the rate of rent is Rs.240/- p.m. and the same stands paid upto February, 1986. The rent for the month of March and April, was tendered in the Court and, therefore, it cannot be said that the tenant is in arrears of rent on the basis of which be can be ordered to be evicted.

In view of the above, while reversing the finding regarding the relationship of the landlord and tenant, the present petition is dismissed.

22-08-2007 (HEMANT GUPTA)
ds JUDGE